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5                   UNITED STATES DISTRICT COURT  
6                   WESTERN DISTRICT OF WASHINGTON  
7                   AT TACOMA

8 STEPHEN SHABEN,  
9                   Plaintiff,  
10                 v.  
11 UNION PACIFIC RAILROAD CO., et al.,  
12                 Defendants.

No. C04-5536 RBL

ORDER DENYING  
DEFENDANTS' MOTION  
FOR CERTIFICATION AS  
FINAL JUDGMENT OR  
FOR INTERLOCUTORY  
APPEAL

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16               This matter is before the court on Defendant Union Pacific's Motion for Certification of the Order  
17 dismissing its counterclaim as a final judgment under Fed. R. Civ. P. 54(b), or alternatively, for a  
18 certification under 28 U.S.C. §1292(b) for an interlocutory appeal. The Motion is contained in  
19 Defendants' Opposition [Dkt. #31] to the Plaintiff's Motion to Dismiss the Counterclaim.

20               The Court has reviewed and considered the Defendants' arguments in favor of such certification.  
21 The court dose not agree that the controlling law in this area is unsettled, despite the Defendants' belief to  
22 the contrary. The court does not believe that justice would be served by forcing the plaintiff to await the  
23 result of the Defendants' attempt to seek a change, refinement, or clarification of the law of indemnity in  
24 the Ninth Circuit.

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26               For that reason, the court DECLINES to certify the issue for immediate appeal under either Fed. R.

1 Civ. P. 54(b) or 28 U.S.C. §1292(b).

2 DATED this 27<sup>th</sup> day of July, 2005

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6 RONALD B. LEIGHTON  
7 UNITED STATES DISTRICT JUDGE  
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